

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
DISTRICT of MASSACHUSETTS

2004 SEP 27 P 4: 14

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action No: 04CV-11557RCL

JOSEPH BOOK,
Plaintiff

V.

DEPARTMENT OF STATE POLICE,
COMMONWEALTH OF MASSACHUSETTS and
STATE TROOPER KURT M. FERRAZANI (No. 2355), STATE TROOPER SMITH
(No. 2586), STATE TROOPER MACKENZIE (No. 1138), and STATE TROOPER
HENNIGAN (ID unknown),
Defendants

PLAINTIFF'S OPPOSITION TO COMMONWEALTH'S MOTION TO DISMISS AND
CONCURRENTLY PLAINTIFF'S MOTION TO REMAND TO STATE COURT

FACTS

For purposes of this Motion, the Plaintiff agrees with all factual statements made by the Commonwealth of Massachusetts, Defendant as submitted on September 3, 2004.

ARGUMENT

Pursuant to Federal Rules of Civil Procedure the Plaintiff opposes the Defendant, Commonwealth of Massachusetts, motion to dismiss on the following grounds:

1. The Defendant cited the 11th Amendment to the United States Constitution as grounds not to go forward in the Federal Courts.
2. The Plaintiff cognizant of the 11th Amendment filed his action in the Massachusetts Superior Court for Suffolk County.
3. Under the terms of Massachusetts General Laws, chapter 258 section 2 et al, the

Plaintiff sent clear and appropriate notice that he was so seeking redress from the Commonwealth for the indignities foisted on him by the Department of State Police and the Troopers.

4. By use of section 9 and 10 of General laws chapter 258, the two types of Defendants are acting to increase the burden on the Plaintiff to prosecute the individual officers and the State Agency. The Commonwealth supports the litigation of the State Trooper while seeking to eliminate any responsibility on the part of the State Agency.

5. In the interest of justice, and to prevent a denial of due process, the Plaintiff asks that this action be remanded to the Massachusetts Superior Court for Suffolk County for proceedings on the merits.

FACTS

For purposes of this Motion, the Plaintiff agrees with all factual statements made by the Commonwealth of Massachusetts, defendant as submitted on September 3, 2004.

Respectfully submitted by,

A handwritten signature in cursive script, appearing to read "Carole A.Z. Root".

Carole A.Z. Root

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